

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 18986 )  
of Howard W. and Pauline H. Rathbun )  
to Appropriate from Bean Creek in )  
Santa Cruz County )

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Decision D 1067

**ADOPTED FEB 15 '62**

DECISION APPROVING APPLICATION

Howard W. and Pauline H. Rathbun having filed Application 18986 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 18986 is for a permit to appropriate 4,300 gallons per day by direct diversion from January 1 to December 31 of each year for domestic use and irrigation from Bean Creek tributary to Zayante Creek thence San Lorenzo River in Santa Cruz County. The point of diversion is to be located within the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 5, T10S, R1W, MDB&M.

2. If subject application is approved, applicants propose to build a permanent residence and establish a commercial nursery with about two acres of nursery stock. Applicants' place of use is

contiguous to Bean Creek, and they believe they may have a riparian right thereto. Due to the uncertainty of their riparian status, they desire a permit prior to making the necessary expenditures.

3. Bean Creek originates in the Santa Cruz Mountains at about elevation 1,600 feet. It flows in a general southwesterly course for about 9 miles to a confluence with Zayante Creek. The San Lorenzo River is about one-half mile farther downstream. The applicants' point of diversion is to be located about 5 miles upstream from the confluence of Bean Creek with Zayante Creek.

4. The protestant City of Santa Cruz operates a municipal pumping and treatment plant which diverts water of the San Lorenzo River just inside its city limits. Appropriation by the City is pursuant to License 1553 (Application 4017), which confirms the right to appropriate 6.2 cubic feet per second (cfs) from San Lorenzo River, and Permit 2738 (Application 5215), which authorizes an additional diversion of 25 cfs. Maximum monthly diversion to date by the City from this source was in August 1957 at an average rate of 12.3 cfs. Diversions by the City have been limited by insufficient water 3 years out of 23 years of record during parts or all of the months of July, August, and September.

5. The Bean Creek water users include downstream ranchers whose use is under claim of riparian or overlying right and Mrs. Alfred Ward whose Permit 11240 (Application 17747) authorizes diversion from Bean Creek just above its junction with Mackenzie Creek for domestic use and irrigation of 2 acres. Bean Creek has limited subsurface flow in its reach where it passes the point of diversion of Mrs. Ward.

6. A small ground water basin located along the sides of Bean Creek helps supply water to the ranchers located downstream from Mrs. Ward and upstream from Bean Creek's junction with Zayante Creek. According to L. R. Weinmann, in about 5 months of a normal year there is no surface flow in the part of Bean Creek that flows through most of his property. A spot check on July 21, 1960, showed that while there was no surface flow passing most of the Weinmann property, there was about 0.2 cubic foot per second at Mrs. Ward's point of diversion and about 0.4 cubic foot per second flowing by the lower end of the L. R. Weinmann property. It appears reasonable to anticipate that there would be no interference with the rights of any legal user if the applicants' right to diversion is limited to such times as water is flowing by the point of diversion of said Mrs. Ward.

7. There is unappropriated water at times to supply the applicants, and subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 18986 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the following order.

The records, documents, and other data relied upon in determining the matter are: Application 18986 and all relevant information on file therewith, particularly the report of the

field investigation made on May 25, 1960, by a staff engineer; the files of Application 18739, License 1553 (Application 4017), License 1114 (Application 5990), and Permit 2738 (Application 5215); United States Geological Survey Felton, Laurel, and Los Gatos quadrangles, 7½-minute series, dated 1955, 1954, and 1953, respectively; United States Department of the Interior, Geological Survey, Water Supply Papers, "Surface Water Supply of the United States, Part 11, Pacific Slope Basins in California."

IT IS HEREBY ORDERED that Application 18986 be, and the same is, approved, and that a permit be issued to the applicants, subject to vested rights including approved prior applications to appropriate from Bean Creek, and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 4,300 gallons per day by direct diversion to be diverted from January 1 to December 31 of each year for domestic use and irrigation. Diversions under the permit to be issued on this application shall be made only when surface flow of Bean Creek exists at the county road crossing above the junction of Bean Creek with Mackenzie Creek in Section 7, T10S, R1W, MDB&M.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before September 1, 1962, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before September 1, 1964.

5. Complete application of the water to the proposed use shall be made on or before September 1, 1965.

6. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

8. The rights hereby authorized are inclusive of and not in addition to such riparian right, if any, as the permittees may have to use the water of Bean Creek on the proposed place of use.

9. Permittees shall allow representatives of the State Water Rights Board and other parties as may be authorized from time to time by said Board reasonable access to project works to determine compliance with the terms of this permit.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the                      day of                      , 1962.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member